

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 423**

Introduced by Cornett, 45.

Read first time January 20, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to children; to amend sections 42-364,  
2 43-2922, 43-2923, and 43-2929, Reissue Revised Statutes  
3 of Nebraska; to change provisions relating to the  
4 determination of child custody and provisions of the  
5 Parenting Act; and to repeal the original sections.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 42-364, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           42-364 (1) In an action under Chapter 42 involving  
4 child support, child custody, parenting time, visitation, or other  
5 access, the parties and their counsel, if represented, shall  
6 develop a parenting plan as provided in the Parenting Act. ~~If~~ For  
7 any case filed before July 1, 2010, if the parties and counsel do  
8 not develop a parenting plan, the complaint shall so indicate as  
9 provided in section 42-353 and before July 1, 2010, the case may be  
10 referred to mediation, specialized alternative dispute resolution,  
11 or other alternative dispute resolution process and ~~on or after~~  
12 such date as provided in the Parenting Act. For any case filed  
13 on and after July 1, 2010, if the parties and counsel do not  
14 develop a parenting plan, the case shall be referred to mediation  
15 or specialized alternative dispute resolution as provided in the  
16 Parenting Act. The decree in an action involving the custody of a  
17 minor child shall include ~~the determination~~ separate and distinct  
18 determinations of legal custody and physical custody ~~based upon the~~  
19 ~~best interests of the child,~~ as defined in the Parenting Act, and  
20 child support. Such determinations shall be made by incorporation  
21 into the decree of (a) a parenting plan developed by the parties,  
22 ~~if approved by the court,~~ or (b) a parenting plan developed by  
23 the court based upon evidence produced after a hearing in open  
24 court. ~~if no parenting plan is developed by the parties or the plan~~  
25 ~~developed by the parties is not approved by the court.~~ The decree

1 shall conform to the Parenting Act. The social security number of  
2 each parent and the minor child shall be furnished to the clerk  
3 of the district court but shall not be disclosed or considered a  
4 public record.

5 (2) In determining legal custody ~~or~~ and physical custody,  
6 the court shall presume that, assuming both parents to be fit, it  
7 is in the child's best interests for the parents to share joint  
8 legal custody and joint physical custody. The court shall not give  
9 preference to either parent based on the sex of the parent and,  
10 except as provided in section 43-2933, no presumption shall exist  
11 that either parent is more fit or suitable than the other. Custody  
12 shall be determined on the basis of the best interests of the  
13 child, as defined in the Parenting Act. This presumption may be  
14 rebutted by a showing based on a preponderance of the evidence that  
15 joint legal and physical custody would not be in the best interests  
16 of the child. Unless parental rights are terminated, both parents  
17 shall continue to have the rights stated in section 42-381.

18 (3) Custody of a minor child ~~may~~ shall be placed with  
19 both parents on a joint legal custody or joint physical custody  
20 basis, or both, (a) when both parents agree to such an arrangement  
21 in the parenting plan and the court determines that ~~such an~~  
22 arrangement is in the best interests of the child both parents are  
23 fit or (b) ~~if~~ when the court specifically finds, after a hearing  
24 in open court, that the presumption that joint physical custody or  
25 joint legal custody, or both, is in the best interests of the minor

1 child has not been rebutted by credible evidence to the contrary.  
2 ~~regardless of any parental agreement or consent.~~

3 (4) In determining the amount of child support to be  
4 paid by a parent, the court shall consider the earning capacity  
5 of each parent and the guidelines provided by the Supreme Court  
6 pursuant to section 42-364.16 for the establishment of child  
7 support obligations. Upon application, hearing, and presentation  
8 of evidence of an abusive disregard of the use of child support  
9 money paid by one party to the other, the court may require the  
10 party receiving such payment to file a verified report with the  
11 court, as often as the court requires, stating the manner in  
12 which such money is used. Child support paid to the party having  
13 custody of the minor child shall be the property of such party  
14 except as provided in section 43-512.07. The clerk of the district  
15 court shall maintain a record, separate from all other judgment  
16 dockets, of all decrees and orders in which the payment of child  
17 support or spousal support has been ordered, whether ordered by a  
18 district court, county court, separate juvenile court, or county  
19 court sitting as a juvenile court. Orders for child support in  
20 cases in which a party has applied for services under Title IV-D of  
21 the federal Social Security Act, as amended, shall be reviewed as  
22 provided in sections 43-512.12 to 43-512.18.

23 (5) Whenever termination of parental rights is placed in  
24 issue:

25 (a) The court shall transfer jurisdiction to a juvenile

1 court established pursuant to the Nebraska Juvenile Code unless  
2 a showing is made that the county court or district court  
3 is a more appropriate forum. In making such determination, the  
4 court may consider such factors as cost to the parties, undue  
5 delay, congestion of dockets, and relative resources available for  
6 investigative and supervisory assistance. A determination that the  
7 county court or district court is a more appropriate forum shall  
8 not be a final order for the purpose of enabling an appeal. If  
9 no such transfer is made, the court shall appoint an attorney as  
10 guardian ad litem to protect the interests of any minor child.  
11 The court may terminate the parental rights of one or both parents  
12 after notice and hearing when the court finds such action to be in  
13 the best interests of the minor child, as defined in the Parenting  
14 Act, and it appears by the evidence that one or more of the grounds  
15 for termination of parental rights stated in section 43-292 exist;  
16 and

17 (b) The court shall inform a parent who does not have  
18 legal counsel of the parent's right to retain counsel and of  
19 the parent's right to retain legal counsel at county expense if  
20 such parent is unable to afford legal counsel. If such parent  
21 is unable to afford legal counsel and requests the court to  
22 appoint legal counsel, the court shall immediately appoint an  
23 attorney to represent the parent in the termination proceedings.  
24 The court shall order the county to pay the attorney's fees and  
25 all reasonable expenses incurred by the attorney in protecting the

1 rights of the parent. At such hearing, the guardian ad litem shall  
2 take all action necessary to protect the interests of the minor  
3 child. The court shall fix the fees and expenses of the guardian ad  
4 litem and tax the same as costs but may order the county to pay on  
5 finding the responsible party indigent and unable to pay.

6 (6) Modification proceedings relating to support,  
7 custody, parenting time, visitation, other access, or removal of  
8 children from the jurisdiction of the court shall be commenced  
9 by filing a complaint to modify. Modification of a parenting  
10 plan is governed by the Parenting Act. Proceedings to modify a  
11 parenting plan shall be commenced by filing a complaint to modify.  
12 Such actions may be referred to mediation, specialized alternative  
13 dispute resolution, or other alternative dispute resolution process  
14 before July 1, 2010, and on and after such date shall be referred  
15 to mediation or specialized alternative dispute resolution as  
16 provided in the Parenting Act. Service of process and other  
17 procedure shall comply with the requirements for a dissolution  
18 action.

19 (7) In any proceeding under this section relating to  
20 custody of a child of school age, certified copies of school  
21 records relating to attendance and academic progress of such child  
22 are admissible in evidence.

23 Sec. 2. Section 43-2922, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25 43-2922 For purposes of the Parenting Act:

1           (1) Appropriate means reflective of the developmental  
2 abilities of the child taking into account any cultural traditions  
3 that are within the boundaries of state and federal law;

4           (2) Approved mediation center means a mediation center  
5 approved by the Office of Dispute Resolution;

6           (3) Best interests of the child means the determination  
7 made taking into account the requirements stated in section  
8 43-2923;

9           (4) Child means a minor under nineteen years of age;

10           (5) Child abuse or neglect has the same meaning as in  
11 section 28-710;

12           (6) Court conciliation program means a court-based  
13 conciliation program under the Conciliation Court Law;

14           (7) Custody includes legal custody and physical custody;

15           (8) Domestic intimate partner abuse means an act of  
16 abuse as defined in section 42-903 and a pattern or history  
17 of abuse evidenced by one or more of the following acts:  
18 Physical or sexual assault, threats of physical assault or sexual  
19 assault, stalking, harassment, mental cruelty, emotional abuse,  
20 intimidation, isolation, economic abuse, or coercion against any  
21 current or past intimate partner, or an abuser using a child to  
22 establish or maintain power and control over any current or past  
23 intimate partner, and, when they contribute to the coercion or  
24 intimidation of an intimate partner, acts of child abuse or neglect  
25 or threats of such acts, cruel mistreatment or cruel neglect of

1 an animal as defined in section 28-1008, or threats of such acts,  
 2 and other acts of abuse, assault, or harassment, or threats of  
 3 such acts against other family or household members. A finding by  
 4 a child protection agency shall not be considered res judicata or  
 5 collateral estoppel regarding an act of child abuse or neglect or  
 6 a threat of such act, and shall not be considered by the court  
 7 unless each parent is afforded the opportunity to challenge any  
 8 such determination;

9 (9) Economic abuse means causing or attempting to cause  
 10 an individual to be financially dependent by maintaining total  
 11 control over the individual's financial resources, including, but  
 12 not limited to, withholding access to money or credit cards,  
 13 forbidding attendance at school or employment, stealing from or  
 14 defrauding of money or assets, exploiting the victim's resources  
 15 for personal gain of the abuser, or withholding physical resources  
 16 such as food, clothing, necessary medications, or shelter;

17 (10) Emotional abuse means a pattern of acts, threats  
 18 of acts, or coercive tactics, including, but not limited to,  
 19 threatening or intimidating to gain compliance, destruction of  
 20 the victim's personal property or threats to do so, violence to  
 21 an animal or object in the presence of the victim as a way to  
 22 instill fear, yelling, screaming, name-calling, shaming, mocking,  
 23 or criticizing the victim, possessiveness, or isolation from  
 24 friends and family. Emotional abuse can be verbal or nonverbal;

25 (11) Joint legal custody means ~~mutual~~ joint authority

1 and responsibility ~~of the parents~~ for making ~~mutual fundamental~~  
2 major decisions regarding the child's welfare; ~~including choices~~  
3 ~~regarding education and health;~~

4 (12) Joint physical custody means ~~mutual authority and~~  
5 joint responsibility of the parents regarding the child's place  
6 of residence for minor day-to-day decisions and the exertion  
7 of continuous ~~blocks of parenting time~~ physical custody by both  
8 parents over the child for significant periods of time;

9 (13) Legal custody means ~~the authority and responsibility~~  
10 for making ~~fundamental~~ major decisions regarding the child's  
11 welfare; ~~including choices regarding education and health;~~

12 (14) Mediation means a method of nonjudicial intervention  
13 in which a trained, neutral third-party mediator, who has no  
14 decisionmaking authority, provides a structured process in which  
15 individuals and families in conflict work through parenting and  
16 other related family issues with the goal of achieving a voluntary,  
17 mutually agreeable parenting plan or related resolution;

18 (15) Mediator means a mediator meeting the qualifications  
19 of section 43-2938 and acting in accordance with the Parenting Act;

20 (16) Office of Dispute Resolution means the office  
21 established under section 25-2904;

22 (17) Parenting functions means those aspects of the  
23 relationship in which a parent or person in the parenting role  
24 makes fundamental decisions and performs fundamental functions  
25 necessary for the care and development of a child. Parenting

1 functions include, but are not limited to:

2 (a) Maintaining a safe, stable, consistent, and nurturing  
3 relationship with the child;

4 (b) Attending to the ongoing developmental needs of the  
5 child, including feeding, clothing, physical care and grooming,  
6 health and medical needs, emotional stability, supervision, and  
7 appropriate conflict resolution skills and engaging in other  
8 activities appropriate to the healthy development of the child  
9 within the social and economic circumstances of the family;

10 (c) Attending to adequate education for the child,  
11 including remedial or other special education essential to the  
12 best interests of the child;

13 (d) Assisting the child in maintaining a safe, positive,  
14 and appropriate relationship with each parent and other family  
15 members, including establishing and maintaining the authority and  
16 responsibilities of each party with respect to the child and  
17 honoring the parenting plan duties and responsibilities;

18 (e) Minimizing the child's exposure to harmful parental  
19 conflict;

20 (f) Assisting the child in developing skills to maintain  
21 safe, positive, and appropriate interpersonal relationships; and

22 (g) Exercising appropriate support for social, academic,  
23 athletic, or other special interests and abilities of the child  
24 within the social and economic circumstances of the family;

25 (18) Parenting plan means a plan for parenting the child

1 that takes into account parenting functions;

2 (19) Parenting time, visitation, or other access means  
3 communication or time spent between the child and parent, the child  
4 and a court-appointed guardian, or the child and another family  
5 member or members;

6 (20) Physical custody means ~~authority~~ and the  
7 responsibility regarding the child's place of residence for minor  
8 day-to-day decisions and the exertion of continuous parenting time  
9 physical custody for significant periods of time;

10 (21) Provisions for safety means a plan developed to  
11 reduce risks of harm to children and adults who are victims  
12 of child abuse or neglect, domestic intimate partner abuse, or  
13 unresolved parental conflict;

14 (22) Remediation process means the method established in  
15 the parenting plan which maintains the best interests of the child  
16 and provides a means to identify, discuss, and attempt to resolve  
17 future circumstantial changes or conflicts regarding the parenting  
18 functions and which minimizes repeated litigation and utilizes  
19 judicial intervention as a last resort;

20 (23) Specialized alternative dispute resolution means a  
21 method of nonjudicial intervention in high conflict or domestic  
22 intimate partner abuse cases in which an approved specialized  
23 mediator facilitates voluntary mutual development of and agreement  
24 to a structured parenting plan, provisions for safety, a transition  
25 plan, or other related resolution between the parties;

1           (24) Transition plan means a plan developed to reduce  
2 exposure of the child and the adult to ongoing unresolved parental  
3 conflict during parenting time, visitation, or other access for the  
4 exercise of parental functions; and

5           (25) Unresolved parental conflict means persistent  
6 conflict in which parents are unable to resolve disputes about  
7 parenting functions which has a potentially harmful impact on a  
8 child.

9           Sec. 3. Section 43-2923, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           43-2923 The best interests of the child require:

12           (1) A parenting arrangement and parenting plan or other  
13 court-ordered arrangement which provides for a child's safety,  
14 emotional growth, health, stability, and physical care and regular  
15 and continuous school attendance and progress for school-age  
16 children;

17           (2) When a preponderance of the evidence indicates  
18 domestic intimate partner abuse, a parenting and visitation  
19 arrangement that provides for the safety of a victim parent;

20           (3) That the child's families and those serving in  
21 parenting roles remain appropriately active and involved in  
22 parenting with safe, appropriate, continuing quality contact  
23 between children and their families when they have shown the  
24 ability to act in the best interests of the child and have shared  
25 in the responsibilities of raising the child;

1           (4) That even when parents have voluntarily negotiated or  
2 mutually mediated and agreed upon a parenting plan, the court shall  
3 determine whether it is in the best interests of the child. ~~for~~  
4 ~~parents to maintain continued communications with each other and~~  
5 ~~to make joint decisions in performing parenting functions as are~~  
6 ~~necessary for the care and healthy development of the child.~~ If the  
7 court rejects a negotiated or mutually mediated parenting plan, the  
8 court shall provide written findings as to why the parenting plan  
9 is not in the best interests of the child; and

10           (5) That certain principles provide a basis upon which  
11 education of parents is delivered and upon which negotiation and  
12 mediation of parenting plans are conducted. Such principles shall  
13 include: To minimize the potentially negative impact of parental  
14 conflict on children while allowing the child to have equal time  
15 or contact with both parents; to provide parents the tools they  
16 need to reach parenting decisions that are in the best interests of  
17 a child; to provide alternative dispute resolution or specialized  
18 alternative dispute resolution options that are less adversarial  
19 for the child and the family; to ensure that the child's voice  
20 is heard and considered in parenting decisions; to maximize the  
21 safety of family members through the justice process; and, in  
22 cases of domestic intimate partner abuse or child abuse or neglect,  
23 to incorporate the principles of victim safety and sensitivity,  
24 offender accountability, and community safety in parenting plan  
25 decisions.

1           Sec. 4. Section 43-2929, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           43-2929 (1) In any proceeding in which parenting  
4 functions for a child are at issue under Chapter 42, a parenting  
5 plan shall be developed and shall be approved by the court. Court  
6 rule may provide for the parenting plan to be developed by the  
7 parties or their counsel, a court conciliation program, an approved  
8 mediation center, or a private mediator. When a parenting plan has  
9 not been developed and submitted to the court, the court shall  
10 create the parenting plan in accordance with the Parenting Act. A  
11 parenting plan shall serve the best interests of the child pursuant  
12 to sections 42-364 and 43-2923 and shall:

13           (a) Assist in developing a restructured family that  
14 serves the best interests of the child by accomplishing the  
15 parenting functions; and

16           (b) Include, but not be limited to, determinations of the  
17 following:

18           (i) Legal custody and physical custody of each child;

19           (ii) Apportionment of parenting time, visitation, or  
20 other access for each child, including, but not limited to,  
21 specified religious and secular holidays, birthdays, Mother's Day,  
22 Father's Day, school and family vacations, and other special  
23 occasions, specifying dates and times for the same, or a formula  
24 or method for determining such a schedule in sufficient detail  
25 that, if necessary, the schedule can be enforced in subsequent

1 proceedings by the court, and set out appropriate times and numbers  
2 for telephone access;

3 (iii) Location of the child during the week, weekend, and  
4 given days during the year;

5 (iv) A transition plan, including the time and places for  
6 transfer of the child, method of communication or amount and type  
7 of contact between the parties during transfers, and duties related  
8 to transportation of the child during transfers;

9 ~~(v) Procedures for making decisions regarding the~~  
10 ~~day-to-day care and control of the child consistent with the major~~  
11 ~~decisions made by the person or persons who have legal custody and~~  
12 ~~responsibility for parenting functions;~~

13 ~~(vi)~~ (v) Provisions for a remediation process regarding  
14 future modifications to such plan;

15 ~~(vii)~~ (vi) Arrangements to maximize the safety of all  
16 parties and the child;

17 ~~(viii)~~ (vii) Provisions to ensure regular and continuous  
18 school attendance and progress for school-age children of the  
19 parties; and

20 ~~(ix)~~ (viii) Provisions for safety when a preponderance of  
21 the evidence establishes child abuse or neglect, domestic intimate  
22 partner abuse, unresolved parental conflict, or criminal activity  
23 which is directly harmful to a child.

24 (2) A parenting plan shall require that the parties  
25 notify each other of a change of address, except that the address

1 or return address shall only include the county and state for a  
2 party who is living or moving to an undisclosed location because of  
3 safety concerns.

4 (3) When safe and appropriate for the best interests of  
5 the child, the parenting plan may encourage mutual discussion of  
6 major decisions regarding parenting functions including the child's  
7 education, health care, and spiritual or religious upbringing.  
8 However, when a prior factual determination of child abuse or  
9 neglect, domestic intimate partner abuse, or unresolved parental  
10 conflict has been made, then consideration shall be given to  
11 inclusion of provisions for safety and a transition plan that  
12 restrict communication or the amount and type of contact between  
13 the parties during transfers.

14 (4) Regardless of the custody determinations in the  
15 parenting plan, unless parental rights are terminated, both parents  
16 shall continue to have the rights stated in section 42-381.

17 (5) In the development of a parenting plan, consideration  
18 shall be given to the child's age, the child's developmental needs,  
19 and the child's perspective, as well as consideration of enhancing  
20 healthy relationships between the child and each party.

21 Sec. 5. Original sections 42-364, 43-2922, 43-2923, and  
22 43-2929, Reissue Revised Statutes of Nebraska, are repealed.